



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,201	02/27/2004	Craig Allan Dunk	P1646US00	4692
63617 7590 10/14/2010 PERRY + CURRIER INC. (FOR RIM) 1300 YONGE STREET SUITE 500 TORONTO, ON M4T-1X3 CANADA				
EXAMINER				
HAILU, KIBROM T				
ART UNIT		PAPER NUMBER		
2461				
NOTIFICATION DATE		DELIVERY MODE		
10/14/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

portfolioprossecution@rim.com
liu@perry-currier.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/787,201

Applicant(s)

DUNK, CRAIG ALLAN

Examiner

KIBROM T. HAILU

Art Unit

2461

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-44.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Huy D Vu/
Supervisory Patent Examiner, Art Unit 2461

/Kibrom T Hailu/
Examiner, Art Unit 2461

Continuation of 11. does NOT place the application in condition for allowance because: First, on page 13 3rd paragraph, the Applicant argues that Chapman doesn't disclose determining of link quality available within a second layer. The Examiner respectfully disagrees. First of all, the claim says that the determination of the QoS of the link is in response to transmission failure. This is the reason why the Examiner brought the failing transmission step of Chapman into the Applicant's attention. Otherwise, Chapman discloses determining whether or not the condition of the data link is normal at the data link layer, and this is clearly explained in the previous office action in response to the Applicant's argument (see page 2 of the office action). Remember, QoS of a link is nothing but condition of the link. Second, the Applicant disputes with the Examiner's assertion of "transport layer" inherency in the communication, and Chapman doesn't show any inclusion of the layer. The Examiner respectfully disagrees with the above argument. As explained in the previous office action, the Examiner submits that every IP communication inherently includes the seven layers including transport layer. There is no way for a communication to have data link layer but not transport layer, and of course the two layers are different. The Applicant argues based on col. 4, lines 37-41. However, this portion simply says that data link layers may communicate frames. It is true that data link layer is used to communicate frames but it doesn't say that the data are transported through or over the data link layer. The Examiner cited this portion to simply indicate that the frames are transported over the communication medium, and it is inherently known that frames are transported via transport layer. If the Applicant carefully read col. 4, lines 11-20, it is clear that the data are transported over the higher protocol layer at the data link or communication medium. Again, one of ordinary skill in the art would realize that in an IP wireless communication, there are always the so called seven layers one of which is transport layer for transporting the messages or frames.